

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9466 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not?Yes

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

he judgement? No

he judgement? No

he judgement? No

he judgement? No

he judgement? No

he judgement? No

he judgement? No

he judgement? No

he judgement? No

J

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? Yes

5. Whether it is to be circulated to the Civil  
Judge? Yes

-----  
AMRUTLAL S TRIVEDI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR PV HATHI for Petitioner

MR DA BAMBHANIA, ADDL.GP, for Respondents.

-----  
CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/12/96

ORAL JUDGEMENT

The petitioner retired on 31.12.1992 while working as Judge of the City Civil Court. Thereafter, he was appointed as Member Secretary of the Gujarat State Legal Aid and Advice Board. He is drawing the basic salary equivalent to the cadre of Joint Secretary in the Government of Gujarat.

While working as Member Secretary of the State Legal Aid and Advice Board the petitioner developed cataract in his left eye and the same was required to be operated. The petitioner approached M & J Institute of Ophthalmology (Western Regional Institute), New Civil Hospital, Ahmedabad for his treatment and operation but the said Government Civil Hospital reported that cataract operation was necessary through Pheco Emulsification System and this facility was not available in the said Institute run by the Government. The petitioner's cataract in the left eye was therefore got operated by the Private Ophthalmologist Dr.Abhay Vasavada through Pheco Emulsification System. The said operation was performed in the private hospital of Dr.Abhay Vasavada on 2.1.1995. It will be pertinent to mention that the petitioner had already moved an application on 8.12.1994 for the permission to get the operation done by the aforesaid Dr.Abhay Vasavada so that he can claim reimbursement of the medical bills and certificate issued by M & J Institute of Ophthalmology had also been produced along with the other papers as enclosed with the application. The cataract had matured while the application was being processed and therefore the operation had to be urgently performed on 2.1.1995. The petitioner having paid charges of Rs.10,745/- for the aforesaid operation of the cataract in his left eye, on 2.2.1995 moved for grant of ex-post facto permission so as to claim reimbursement of the said amount and he also produced the receipt of the payment. The petitioner's initial application dated 8.12.1994 and the subsequent application dated 2.2.1995 for reimbursement were being processed and the correspondence was going on, the petitioner cited instances where the Government had granted such reimbursement to other officers and ultimately the Legal Department by its resolution dated 29.8.1995 sanctioned the said amount of Rs.10,745/- less 50% of the room charges and other medical expenses. The said resolution was passed with the concurrence of Health and finance Departments and the due amount as per sanction was subsequently paid to the petitioner for the

operation of his left eye at the private hospital of Dr.Abhay Vasavada.

The petitioner also developed cataract in his right eye and the similar operation was to be performed. He again got himself medically examined in M & J Institute of Ophthalmology, Civil Hospital, Ahmedabad on 22.2.1995 and even at this time the Civil Hospital did not have Pheco Emulsification System of cataract extraction and the petitioner was required to be operated on 24.2.1995 at the same private hospital of Dr.Abhay Vasavada. Photostat copy of the certificate issued by Dr.S.K.Narang, Director of M & J Institute of Ophthalmology, New Civil Hospital, Ahmedabad issued on 22.2.1995 has been enclosed by the petitioner with this Special Civil Application. For this operation of his right eye with the aforesaid private doctor's hospital, the petitioner incurred the expenses of Rs. 10,835/-. He submitted the application for sanction of that bill alongwith necessary documents and the certificate issued by the Director of M & J Institute of Ophthalmology for sanction and reimbursement was made on 22.5.1995. It is thus clear that at the time when the sanction for the payment of expenses incurred for the operation of left eye was issued on 22.8.1995, the petitioner's application dated 22.5.1995 claiming reimbursement for the operation of the right eye was pending. Both the applications could therefore be processed simultaneously but the same were not so processed and in August, 1995 the sanction was issued only with regard to the reimbursement of the medical bills in respect of the operation of left eye. It is the case of the petitioner that the queries which had been raised this time were identical to the queries which were raised at the time when the claim was made for the reimbursement of the medical bills in respect of the operation of the left eye and the same had already been dealt with. However, the petitioner received letter dated 30.3.1996 calling upon him to cite rules under which he is claiming reimbursement, although in identical fact situation sanction for expenses incurred for left eye had already been issued on 29.8.1995. The petitioner filed detailed reply on 4.4.1996 answering all the queries. The petitioner was conveyed by the Legal Department vide its letter dated 3.6.1996 that his application for reimbursement cannot be accepted and the reimbursement of the medical expenses incurred for the operation of the cataract of the right eye was declined, while the reimbursement had already been made for similar operation of the left eye. The petitioner submitted a detailed representation for reconsideration of the whole matter on 25.6.1996 and the petitioner's total claim is

for Rs.10,837/-, the petitioner's representation has been turned down by cryptic communication dated 18.9.1996.

Aggrieved from the denial of the reimbursement of the medical bill in respect of the operation of cataract in his right eye as per communication dated 3.6.1996 (Annexure 'F') and the rejection of his representation vide Annexure 'H' dated 18.9.1996 the petitioner preferred this Special Civil Application before this Court on 8.11.1996. On 28.11.1996 the notice was issued to the respondents made returnable on 12.12.1996 as to why this petition should not be admitted and finally disposed of. This order dated 28.11.1996 itself is therefore treated as Rule. When the matter came up before the Court again on 12.12.1996 time was sought by the learned Addl.Government Pleader and the matter was fixed for final hearing on 18.12.1996 i.e. today. No return has been filed on behalf of the respondents but Mr.D.A.Bambhania, learned Addl.Government Pleader has contested the petition on the basis of his oral submission and the only submission which has been stressed is that the petitioner ought to have got himself operated in some private hospital which is recognised by the Government.

It is a dismal fact that an officer working as Member Secretary of the Gujarat State Legal Aid and Advice Board has to seek protection of this Court for the reimbursement of the bills and the respondents are contesting petitioner's claim in respect of the reimbursement of the medical bills of the right eye whereas they themselves have already sustained and made good the exactly identical claim in respect of the left eye. The reasonings which are being given now for denying the payment in respect of the reimbursement of the expenses incurred for operation in the cataract in the right eye was equally available as against the payment of the left eye and the payment in respect of the left eye had been sanctioned on 29.8.1995 while the application for right eye on similar ground was pending with the respondents as already been made on 22.5.1995. The learned Addl. Government Pleader submits that the payment in respect of the reimbursement was earlier made as a special case. I fail to understand what makes the special case for left eye and what does not make the special case for right eye. The patient is the same, nature of operation is same, same is the private doctor viz.Dr.Abhay Vasavada, same was the situation obtaining at that point of time, same is the Director of M & J Institute who has certified on both the occasions that Pheco Emulsification Machine was not available, the same

is the officer. The only difference is that earlier it was reimbursement for left eye and now in respect of the right eye. It clearly appears that the approach and orientation with which the petitioner's request has been considered is arbitrary to the core and the petitioner's request has been turned down for no reasons through cryptic communication that his application is rejected. The patient who is in urgent need of operation of eye cannot be made to move from pillar to post in the whole city as to which private hospital is recognised by the Government and where the said facility is available. No such schedule or copy of the list is said to be readily available and it will be too much to expect that a person should wait for search of this nature when he is required to be urgently operated for which required facilities are not available in the Institute attached with the Government Hospital. No rule which can be said to be an impediment against such reimbursement has been cited on behalf of the respondents. I find that the practice which is being followed by the respondents in such cases depend upon the facts and circumstances of each case and Mr.D.A.Bambhania also agrees that the Government has been issuing such sanction on the basis of facts and circumstances of each case decided on its own facts. It is not denied that in the past there are instances more than one in which the medical bills of the private hospitals have been reimbursed and so far as the present case is concerned with regard to the present petitioner himself the medical bills of the same private doctor have been reimbursed. Arbitrariness in any course of action is the very antithesis of the reasonableness as envisaged and embodied in the principles of equality contained in Article 14 of the Constitution of India and therefore I am of the considered opinion that the petitioner's case for reimbursement in respect of the operation of the cataract of the right eye by same private doctor has not received fair consideration at the hands of the respondent and his request has been turned down in an unjust manner, which cannot be said to be reasonable or inconformity with the principles of reasonableness within the meaning of Article 14 of the Constitution of India and there was no reason to make departure or deviation from the earlier practice in the case of the petitioner.

Upshot of the aforesaid discussion is that the rejection of the petitioner's request in respect of the reimbursement of medical bills for the operation of cataract of his right eye as rejected vide communication dated 3.6.1996 and the rejection of his representation on 18.9.1996 are hereby quashed and set aside. The respondents are directed to decide the petitioner's claim

for reimbursement of the medical bills in respect of the operation of his right eye on the same lines on which his earlier claim in respect of the operation of cataract in the left eye was decided and appropriate orders in this regard shall be issued in the light of the observations made in this judgment and on the lines on which the earlier sanction had been issued on 29.8.1995 and the payment of the due amount shall be made available to the petitioner within a period of two months from the date the certified copy of this order is served upon the respondents. This Special Civil Application is therefore allowed. Rule is made absolute in the terms as aforesaid. No order as to costs.

-----